UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YVONNE ROSADO,

Plaintiff,

-against-

THE CITY OF NEW YORK, a municipal entity, POLICE OFFICER RUBEN CUESTA,; "JOHN DOE" PARTNER OF P.O. CUESTA; "JOHN DOE" NYPD OFFICER RESPONSIBLE FOR FRAINING P.O. CUESTA; "JOHN DOE" POLICE OFFICER WHO LAY ON TOP OF THE PLAINTIFF; "JOHN DOE" POLICE OFFICERS 1-4;

Defendants.

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ANSWER TO THE COMPLAINT ON BEHALF OF DEFENDANTS THE CITY OF NEW YORK AND POLICE OFFICER CUESTA

16 CV 9695 (VEC)

Jury Trial Demanded

Defendants City of New York and Police Officer Ruben Cuesta, by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, as and for their answer to the Complaint, respectfully allege, upon information and belief, the following:

1. Deny the allegations set forth in paragraph "1" of the Complaint, except admit only that plaintiff purports to bring this action and seek damages as stated therein.

2. Deny the allegations set forth in paragraph "2" of the Complaint, except admit only that, on or about February 13, 2016, members of the New York City Police Department responded to an incident at 156 East 184th Street in the Bronx, that a pit-bull exited plaintiff's apartment, and that Police Officer Cuesta shot said pit-bull.

3. Deny the allegations set forth in paragraph "3" of the Complaint, except admit only that the pit-bull died.

4. Deny the allegations set forth in paragraph "4" of the Complaint, except admit only that plaintiff purports to bring this action and proceed as stated therein.

5. Deny the allegations set forth in paragraph "5" of the Complaint, except admit only that plaintiff brings this action and purports to base jurisdiction as set forth therein.

6. Deny the allegations set forth in paragraph "6" of the Complaint, except admit only that plaintiff purports to base venue as set forth therein.

7. Deny the allegations set forth in paragraph "7" of the Complaint, except admit only that the Office of the Comptroller received a document purporting to be a Notice of Claim on or about March 11, 2016, and that on September 17, 2016, plaintiff appeared for a General Municipal Law § 50 hearing. Defendants further admit that the claims alleged herein have not been settled or otherwise resolve.

8. Paragraph "8" of the Complaint is a demand for trial by jury, and accordingly, requires no response.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the Complaint.

10. Deny the allegations set forth in paragraph "10" of the Complaint, except admit only that the City of New York is a municipal corporation organized under the laws of the State of New York.

11. Deny the allegations set forth in paragraph "11" of the Complaint, except admit only that the City of New York maintains a police department, and respectfully refer the Court to the New York City Charter and Administrative Code and other relevant provisions of law for a recitation of the relationship between the City and the New York City Police Department ("NYPD") and the City's responsibilities incident thereto.

12. Deny the allegations set forth in paragraph "12" of the Complaint, except admit only that Officer Ruben Cuesta, Tax ID No. 946886, was employed by the NYPD on February 13, 2016.

13. Deny the allegations set forth in paragraph "13" of the Complaint, and further state that the allegation regarding whether Officer Cuesta was "acting within the scope of his employment" is a conclusion of law to which no response is required.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "14" of the Complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "15" of the Complaint and further state that the allegation regarding whether defendant "PARTNER OF P.O. CUESTA" was "acting within the scope of his employment" is a conclusion of law to which no response is required.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "16" of the Complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the Complaint and further state that the allegation regarding whether "Doe Training Officer" was "acting within the scope of his/her employment" is a conclusion of law to which no response is required.

18. Deny the allegations set forth in paragraph "18" of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "18" of the Complaint pertaining to the identity of the purported defendant "John Doe."

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "19" of the Complaint and further state that the allegation regarding whether "Defendant JOHN DOE" [sic] POLICE OFFICER WHO LAY ON TOP OF THE PLAINTIFF" was "acting within the scope of his employment" is a conclusion of law to which no response is required.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "20" of the Complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Complaint and further state that the allegation regarding whether "Defendant 'JOHN DOE' POLICE OFFICERS 1-4" were "acting within the scope of their employment" is a conclusion of law to which no response is required.

22. Paragraph "22" of the Complaint does not include any factual allegations and therefore does not require a response.

23. Paragraph "23" of the Complaint does not include any factual allegations and therefore does not require a response.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "24" of the Complaint, except admit only that, on or about February 13, 2016, members of the NYPD, including Officer Cuesta, responded to an incident at 156 East 184th Street in the Bronx.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "25" of the Complaint, except admit only that members of the NYPD responded to an incident at 156 East 184th Street in the Bronx pertaining to an alleged violation of an Order of Protection.

26. Deny the allegations set forth in paragraph "26" of the Complaint.

27. Deny the allegations set forth in paragraph "27" of the Complaint.

28. Deny the allegations set forth in paragraph "28" of the Complaint.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "29" of the Complaint, except admit only that the door to an apartment in which Ms. Rosado was located opened.

30. Deny the allegations set forth in paragraph "30" of the Complaint, except admit only that a pit-bull exited the door of the apartment in which Ms. Rosado was located.

31. Deny the allegations set forth in paragraph "31" of the Complaint, except admit only that Officer Cuesta drew his service weapon.

32. Deny the allegations set forth in paragraph "32" of the Complaint, and further deny knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph "32" of the Complaint regarding whether "Spike" was "unaware of any danger."

33. Deny the allegations set forth in paragraph "33" of the Complaint, except admit only that the pit-bull moved his tail.

34. Deny the allegations set forth in paragraph "34" of the Complaint.

35. Deny the allegations set forth in paragraph "35" of the Complaint, except admit only that Officer Cuesta shot the pit-bull.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "36" of the Complaint.

37. Deny the allegations set forth in paragraph "37" of the Complaint.

38. Deny the allegations set forth in paragraph "38" of the Complaint.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “39” of the Complaint.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “40” of the Complaint.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “41” of the Complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “42” of the Complaint.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the Complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the Complaint, except admit only that the pit-bull died.

45. Deny the allegations set forth in paragraph “45” of the Complaint.

46. Deny the allegations set forth in paragraph “46” of the Complaint, except admit that members of the NYPD requested that additional units respond to the incident location.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the Complaint.

48. Deny the allegations set forth in paragraph “48” of the Complaint.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “49” of the Complaint, except admit only that plaintiff engaged members of the NYPD.

50. Deny the allegations set forth in paragraph “50” of the Complaint.

51. Deny the allegations set forth in paragraph "51" of the Complaint.

52. Deny the allegations set forth in paragraph "52" of the Complaint.

53. Deny the allegations set forth in paragraph "53" of the Complaint, except admit only that the pit-bull died.

54. Deny the allegations set forth in paragraph "54" of the Complaint.

55. Deny the allegations set forth in paragraph "55" of the Complaint and further deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "55" of the Complaint concerning plaintiff's relationship with "Spike."

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "55" of the Complaint, except admit only that plaintiff purports to seek compensation and proceed as stated therein.

57. Deny the allegations set forth in paragraph "57" of the Complaint.

58. Deny the allegations set forth in paragraph "58" of the Complaint.

59. Deny the allegations set forth in paragraph "59" of the Complaint.

60. Deny the allegations set forth in paragraph "60" of the Complaint.

61. Deny the allegations set forth in paragraph "61" of the Complaint.

62. Deny the allegations set forth in paragraph "62" of the Complaint.

63. Deny the allegations set forth in paragraph "63" of the Complaint.

64. Deny the allegations set forth in paragraph "64" of the Complaint.

65. Deny the allegations set forth in paragraph "65" of the Complaint, except admit only that Officer Cuesta shot the pit-bull.

66. Deny the allegations set forth in paragraph "66" of the Complaint.

67. Deny the allegations set forth in paragraph "67" of the Complaint.

68. Deny the allegations set forth in paragraph "68" of the Complaint.

69. Deny the allegations set forth in paragraph "69" of the Complaint.

70. Deny the allegations set forth in paragraph "70" of the Complaint.

71. Deny the allegations set forth in paragraph "71" of the Complaint.

72. Deny the allegations set forth in paragraph "72" of the Complaint and further object to and deny the allegation regarding the "16 year old girl" as no "16 year old girl" was shot in relation to this purported incident.

73. Deny the allegations set forth in paragraph "73" of the Complaint.

74. Deny the allegations set forth in paragraph "74" of the Complaint.

75. Deny the allegations set forth in paragraph "75" of the Complaint.

76. Deny the allegations set forth in paragraph "76" of the Complaint, and further state that the allegations regarding whether the defendants "were carried out under color of state law" are conclusions of law to which no response is required.

77. Object to and deny the embedded assertion as to "the above constitutionally impermissible conduct" and deny the remaining allegations set forth in paragraph "77" of the Complaint.

78. Deny the allegations set forth in paragraph "78" of the Complaint.

79. In response to the allegations set forth in paragraph "79" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

80. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "80" of the Complaint, and further state that

the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "81" of the Complaint, and further state that the allegations pertaining to whether "Spike" was regarded as property is a conclusion of law to which no response is required.

82. Deny the allegations set forth in paragraph "82" of the Complaint.

83. Deny the allegations set forth in paragraph "83" of the Complaint.

84. Deny the allegations set forth in paragraph "84" of the Complaint.

85. Deny the allegations set forth in paragraph "85" of the Complaint.

86. Deny the allegations set forth in paragraph "86" of the Complaint.

87. Deny the allegations set forth in paragraph "87" of the Complaint.

88. In response to the allegations set forth in paragraph "88" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

89. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "89" of the Complaint, and further state that the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

90. Deny the allegations set forth in paragraph "90" of the Complaint.

91. Deny the allegations set forth in paragraph "91" of the Complaint.

92. Deny the allegations set forth in paragraph "92" of the Complaint.

93. In response to the allegations set forth in paragraph "93" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

94. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "94" of the Complaint, and further state that the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

95. Deny the allegations set forth in paragraph "95" of the Complaint.

96. Deny the allegations set forth in paragraph "96" of the Complaint.

97. Deny the allegations set forth in paragraph "97" of the Complaint.

98. In response to the allegations set forth in paragraph "98" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

99. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "99" of the Complaint, and further state that the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

100. Deny the allegations set forth in paragraph "100" of the Complaint.

101. Deny the allegations set forth in paragraph "101" of the Complaint.

102. Deny the allegations set forth in paragraph "102" of the Complaint.

103. Deny the allegations set forth in paragraph "103" of the Complaint.

104. In response to the allegations set forth in paragraph "104" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

105. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "105" of the Complaint, and further state that the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

106. Deny the allegations set forth in paragraph "106" of the Complaint.

107. Deny the allegations set forth in paragraph "107" of the Complaint.

108. Deny the allegations set forth in paragraph "108" of the Complaint.

109. In response to the allegations set forth in paragraph "109" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

110. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "110" of the Complaint, and further state that the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

111. Deny the allegations set forth in paragraph "111" of the Complaint.

112. Deny the allegations set forth in paragraph "112" of the Complaint.

113. Deny the allegations set forth in paragraph "113" of the Complaint.

114. In response to the allegations set forth in paragraph "114" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

115. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "115" of the Complaint, and further state that the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

116. Deny the allegations set forth in paragraph "116" of the Complaint.

117. Deny the allegations set forth in paragraph "117" of the Complaint.

118. Deny the allegations set forth in paragraph "118" of the Complaint.

119. In response to the allegations set forth in paragraph "119" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

120. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "120" of the Complaint, and further state that the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

121. Deny the allegations set forth in paragraph "121" of the Complaint.

122. Deny the allegations set forth in paragraph "122" of the Complaint.

123. Deny the allegations set forth in paragraph "123" of the Complaint.

124. In response to the allegations set forth in paragraph "124" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

125. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "125" of the Complaint, and further state that

the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

126. Deny the allegations set forth in paragraph "126" of the Complaint.

127. Deny the allegations set forth in paragraph "127" of the Complaint.

128. Deny the allegations set forth in paragraph "128" of the Complaint.

129. In response to the allegations set forth in paragraph "129" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

130. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "130" of the Complaint, and further state that the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

131. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "131" of the Complaint.

132. Object to and deny the embedded assertion as to "the acts of Police Officer Defendants which caused harm to Yvonne," deny the allegations set forth in paragraph "132" of the Complaint, and further state that the allegation regarding whether the defendants acts "were done within the scope of these officers' employment" is a conclusion of law to which no response is required.

133. Deny the allegations set forth in paragraph "133" of the Complaint.

134. Deny the allegations set forth in paragraph "134" of the Complaint.

135. In response to the allegations set forth in paragraph "135" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

136. Deny the allegations set forth in paragraph "136" of the Complaint.

137. Object to and deny the embedded assertion as to "the wrongful conduct heretofore alleged in this Complaint," and deny the remaining allegations set forth in paragraph "137" of the Complaint.

138. Deny the allegations set forth in paragraph "138" of the Complaint.

139. Deny the allegations set forth in paragraph "139" of the Complaint.

140. In response to the allegations set forth in paragraph "140" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

141. Object to and deny the embedded assertion as to "the acts complained of herein," deny the allegations set forth in paragraph "141" of the Complaint, and further state that the allegations regarding whether the defendants "were acting under color of state law" are conclusions of law to which no response is required.

142. Deny the allegations set forth in paragraph "142" of the Complaint.

143. Deny the allegations set forth in paragraph "143" of the Complaint.

144. Deny the allegations set forth in paragraph "144" of the Complaint.

145. In response to the allegations set forth in paragraph "145" of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer, as if fully set forth herein.

146. Deny the allegations set forth in paragraph "146" of the Complaint.

147. Deny the allegations set forth in paragraph "147" of the Complaint.

148. Deny the allegations set forth in paragraph "148" of the Complaint.

149. Deny the allegations set forth in paragraph "149" of the Complaint.

FIRST AFFIRMATIVE DEFENSE:

150. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE:

151. Defendants City of New York and Officer Cuesta have not violated any rights, privileges, or immunities under the Constitution or laws of the United States or the States of New York or any political subdivision thereof, nor have defendants violated any acts of Congress providing for the protection of civil rights.

THIRD AFFIRMATIVE DEFENSE:

152. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the conduct of third parties and was not the proximate result of any act of defendants City of New York or Officer Cuesta.

FOURTH AFFIRMATIVE DEFENSE:

153. Officer Cuesta has not violated any clearly established constitutional or statutory right of which a reasonable person would have known and, therefore, is protected by qualified immunity.

FIFTH AFFIRMATIVE DEFENSE:

154. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York is entitled to governmental immunity from liability.

SIXTH AFFIRMATIVE DEFENSE:

155. Plaintiff has failed to mitigate his alleged damages.

SEVENTH AFFIRMATIVE DEFENSE:

156. At all times relevant to the acts alleged in the Complaint, defendant Officer Cuesta acted reasonably in the proper scope and lawful exercise of his lawful discretion.

EIGHTH AFFIRMATIVE DEFENSE:

157. Punitive damages are not recoverable against the City of New York.

NINTH AFFIRMATIVE DEFENSE:

158. Plaintiff has failed to state a viable claim under Monell v. Dep't of Social Services, 436 U.S. 658 (1978).

TENTH AFFIRMATIVE DEFENSE:

159. Plaintiff's claims may be barred, in part, by the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE:

160. To the extent plaintiff alleges any states law claims, plaintiff may have failed to comply with New York General Municipal Law §§ 50-(e), et seq.

TWELFTH AFFIRMATIVE DEFENSE:

161. Plaintiff provoked any incident.

THIRTEENTH AFFIRMATIVE DEFENSE:

162. To the extent any force was used, such force was reasonable, necessary, and justified.

WHEREFORE, Defendants City of New York and Officer Cuesta request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 10, 2017

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By: / s/
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cc: **VIA ECF**
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